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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

KEITH MILTON RHINEHART, a single person; and THE AQUARIAN FOUNDATION, a Washington not-for-profit corporation,

Petitioners,

v.

THE SEATTLE TIMES, a Delaware corporation, d/b/a THE SEATTLE TIMES; ERIK LACITIS, and JANE DOE LACITIS,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals, Division I, of the State of Washington

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BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

Respondents [1] ask that the Court deny the writ of certiorari petitioners have requested.

COUNTER-STATEMENT OF THE CASE

More than a decade ago these petitioners' first defamation lawsuit against respondents was the subject of this Court's decision in *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984). In the years since, petitioners have filed

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[1] Blethen Corporation, a privately-held corporation, owns 50.5% and Knight-Ridder Investment Co., a company that is affiliated with Knight-Ridder Newspapers, Inc., a publicly-held corporation, owns 49.5% of the common voting stock of respondent Seattle Times Company.

three unsuccessful petitions seeking certiorari in that case.[2]

In addition to this consolidated case,[3] petitioners have brought several other frivolous lawsuits and appeals

[2] Since 1980 petitioners have filed three defamation lawsuits against respondents. Their first lawsuit (hereafter "*Rhinehart I*") against respondents was the subject of the 1984 opinion by this Court, which affirmed the decision by the Washington Supreme Court in *Rhinehart v. Seattle Times Co.*, 98 Wash. 2d 226, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20 (1984), and of the three unsuccessful petitions for certiorari that have been filed at five-year intervals by these same petitioners. *See, e.g., Rhinehart v. Seattle Times Co.*, 467 U.S. 1230 (1984); *Rhinehart v. Seattle Times Co.*, 490 U.S. 1015 (1989); *Rhinehart v. Seattle Times Co.*, 114 S. Ct. 1544 (1994). This Petition for Certiorari involves their second and third lawsuits against respondents (hereafter "*Rhinehart II*" and "*Rhinehart III*"), which were commenced in 1982 and 1986, respectively, and were later consolidated by the trial court.

[3] Petitioners filed these two defamation lawsuits in King County Superior Court in Seattle. The first (*Rhinehart II*) alleged that the newspaper had defamed petitioners when it published an article about the former Foundation member who was the subject of the Foundation's unsuccessful Bankruptcy Court action that was dismissed after Rhinehart appeared at his deposition dressed in a gorilla costume. The other action (*Rhinehart III*) involved claims of defamation brought by Rhinehart, the Foundation, and Linda Dunn (a Foundation officer) because the newspaper had reported on and quoted from this Court's May 1984 decision upholding the protective order issued in *Rhinehart I*. The trial court dismissed the claims and awarded sanctions in *Rhinehart II* after petitioners repeatedly defied discovery orders. *Rhinehart v. Seattle Times*, 15 Med. L. Rep. (BNA) 1510 (Wash. Super. Ct. May 13, 1988). The trial court ruled that the claims in *Rhinehart III* were frivolous and were brought in violation of RCW 4.84.185 (a statute designed to deter frivolous litigation) and Washington Civil Rule 11 and awarded respondents approximately $42,000 in sanctions. *Rhinehart v. Seattle Times*, 15 Med. L. Rep. (BNA) 1509 (Wash. Super. Ct. May 11, 1988). The Washington Court of Appeals affirmed these rulings. *Rhinehart v. Seattle Times, Inc.*, 59 Wash. App. 332, 798 P.2d 1155 (1990) (published ruling); *Rhinehart v. Seattle Times*, 69 Wash. App. 1067 (1993) (unpublished decision). The Washington Supreme Court denied review. *Rhinehart v. Seattle Times*, 124 Wash. 2d 1010, 879 P.2d 293 (1994).

against media defendants and others in the courts of the State of Washington [4] and in the federal

[4] In addition to this case (*Rhinehart II* and *Rhinehart III*) petitioners have filed at least six other frivolous lawsuits and frivolous appeals in the Washington courts.

First, petitioners defied discovery orders in a libel lawsuit that they had filed against a Seattle television station (KIRO), the Tacoma News-Tribune, and others. Petitioners argued their lawsuits were exempt from the normal rules of civil discovery and forced the trial court to dismiss their claims. They appealed and lost in the Washington Court of Appeals (which ruled the arguments "specious" and "without merit"). The Washington Supreme Court and this Court refused review. *Rhinehart v. KIRO, Inc.*, 44 Wash. App. 707, 723 P.2d 22 (1986), *rev. denied*, 108 Wash. 2d 1008, *app. dismissed sub nom., Rhinehart v. Tribune Pub. Co.*, 484 U.S. 805 (1987). In a related case, the Washington Court of Appeals affirmed the dismissal of a similar set of claims brought by Rhinehart. *Rhinehart v. Powers*, 45 Wash. App. 1005 (1986) (unpublished decision).

Second and third, between 1985 and 1989, petitioners also resisted discovery orders in a collection action filed by their former attorneys in *Rhinehart I*. Their defiance resulted in a default judgment and an award of sanctions issued by the Washington Court of Appeals and upheld by the Washington Supreme Court and this Court on further review. *Edwards & Barbieri v. Aquarian Foundation*, No. 17405-3-I (Wash. App. Aug. 28, 1986), *rev. denied*, 107 Wash. 2d 1027, *app. dismissed*, 484 U.S. 892 (1987), *reh. denied*, 484 U.S. 1083 (1988). Two years later, in supplemental proceedings, petitioners again refused to comply with discovery, again sustained sanctions, again sought further appellate review, and again lost, with the Washington Court of Appeals imposing sanctions as a consequence of petitioners' frivolous appeal and the Washington Supreme Court and this Court refusing further review. *Aquarian Foundation v. Edwards & Barbieri*, No. 20268-5-I (Wash. App. Nov. 21, 1988), *rev. denied*, 112 Wash. 2d 1003, *cert. denied*, 493 U.S. 813 (1989).

Fourth, the Washington Court of Appeals awarded sanctions in respondents' favor as a result of petitioners' refusals to comply with discovery orders in *Rhinehart I* and the subsequent frivolous appeal. The court also affirmed the dismissal of petitioners' claims, held that petitioners' appeal was frivolous and that "the issues are devoid of merit with no reasonable possibility of reversal," and ordered the case again remanded to the Superior Court to deter-

courts.[5] The current Petition involves petitioners' second and third defamation lawsuits brought against respond-

mine the amount of the sanctions to be imposed upon petitioners. The Washington Supreme Court then denied review, and this Court dismissed the consequent appeal. *Rhinehart v. Seattle Times Co.*, 51 Wash. App. 561, 754 P.2d 1243, *rev. denied*, 111 Wash. 2d 1025 (1988), *app. dismissed*, 490 U.S. 1015, *reh. denied*, 490 U.S. 1102 (1989).

Fifth, the *Rhinehart I* matter was again remanded to the trial court, which reviewed respondents' time records and issued a sanctions award against petitioners, who again appealed. On August 13, 1990, the Washington Court of Appeals rejected petitioners' various constitutional and statutory challenges and affirmed all of the trial court rulings except for its determination of the amount of attorneys' fees. *Rhinehart v. Seattle Times, Inc.*, 58 Wash. App. 1060 (1990) (unpublished decision). Although it retained jurisdiction, the Court of Appeals again referred the case back to the trial court to supplement the record with more specific findings regarding the fee award. Those findings were entered, petitioners again appealed, and the Washington Court of Appeals again affirmed. *Rhinehart v. Seattle Times*, 69 Wash. App. 1066 (1993) (unpublished decision). The court then denied reconsideration and petitioners filed a petition for review, which the Washington Supreme Court denied on December 1, 1993. *Rhinehart v. Seattle Times*, 122 Wash. 2d 1027, 866 P.2d 40 (1993). This Court later denied certiorari. *Rhinehart v. Seattle Times Co.*, 114 S. Ct. 1544 (1994).

Sixth, petitioners filed a second defamation suit against KIRO and again refused to comply with discovery, which again forced the trial court to dismiss their claims because of their deliberate noncompliance with discovery orders. This decision was again affirmed by the Washington Court of Appeals, which imposed a sanctions award, and was sustained on further appellate review. This Court denied certiorari in 1990. *Rhinehart v. KIRO, Inc.*, No. 22546-4-I (Wash. App. Aug. 8, 1989), *rev. denied*, 113 Wash. 2d 1035, 785 P.2d 825, *cert. denied*, 498 U.S. 850 (1990).

[5] Petitioners have brought at least three frivolous lawsuits in the federal courts. In *Rhinehart v. Stauffer*, 638 F.2d 1169 (9th Cir. 1979), for example, the court affirmed a trial court decision dismissing a defamation action under Fed. R. Civ. P. 11 because petitioner Rhinehart and his attorney had relied "upon friends to

ents. They complain that the Washington Court of Appeals has affirmed a trial court decision that ordered them to reimburse respondents for the expenses, including rea-

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convey information in a casual way" and no investigation into the merits of the case had been undertaken.

Later, petitioners brought claims in the United States Bankruptcy Court in Seattle against a former Aquarian Foundation member who (as another bankruptcy court observed) had left the fold when he "found questionable the Foundation's practice of passing off cheap jewelry as 'sacred' gems in return for donations ranging anywhere from $25.00 to $1,000.00." *In re Thomas*, 54 B.R. 287, 290 (Bankr. D. Hawaii 1985). The United States Bankruptcy Court in Seattle dismissed those claims because of petitioners' "flagrant and intentional violation of the rules of discovery" and held that petitioners' misconduct, which included Rhinehart's appearance at his deposition dressed in a gorilla costume, was designed to make a "mockery of the Court and of the judicial process." Rejecting petitioners' constitutional attacks, the United States District Court affirmed the decision and the Ninth Circuit dismissed petitioners' appeal. *Herr v. Aquarian Foundation, Inc.*, Adv. No. 80-0871 (Bankr. W.D. Wash. Feb. 28, 1984), *aff'd*, No. C84-496V (W.D. Wash. Sept. 7, 1984), *app. dismissed*, No. 84-4369 (9th Cir. Oct. 11, 1985).

More recently, petitioners filed a civil rights action in United States District Court in Seattle against the State of Washington, arguing that enforcement of the Civil Rules violated their claimed constitutional right to pursue frivolous litigation. Because the claims against the State were absolutely barred by the Eleventh Amendment, Chief Judge Barbara J. Rothstein dismissed their action with prejudice, ruled that the claims were frivolous, and imposed sanctions. On February 15, 1994, the United States Court of Appeals for the Ninth Circuit agreed and affirmed her rulings in their entirety. The Ninth Circuit also imposed $1,000 in additional sanctions because the appeal was frivolous, ruling that petitioners had "failed to cite any authority to support the result sought in this case" and rejecting their argument that the Eleventh Amendment immunity issue was "in any way unsettled," given that it "has been consistently rejected for over a hundred years." As the court noted: "we and the Supreme Court have consistently rejected each of Appellants' arguments." *Aquarian Foundation v. Washington State*, 1991 U.S. Dist. LEXIS 16569 (W.D. Wash. Aug. 21, 1991), and 1991 U.S. Dist. LEXIS 16571 (W.D. Wash. Oct. 17, 1991), *aff'd*, 19 F.3d 25 (9th Cir.), *cert. denied*, 114 S. Ct. 2744 (1994).

sonable attorneys' fees, that respondents incurred in responding to one of their frivolous cases.

The facts underlying the Petition are quite simple. The subjects of this Petition are two defamation lawsuits that petitioners brought in King County (Washington) Superior Court against respondents. In 1987 these suits were consolidated by King County Superior Court Judge Sharon S. Armstrong and consolidated on appeal.

In one lawsuit (*Rhinehart II*, filed in 1982) petitioners claimed that the newspaper had defamed them when it published an article about the former Foundation member who later became the target of the Foundation's unsuccessful Bankruptcy Court action that was dismissed after Rhinehart's appearance at his deposition dressed in a gorilla costume.[6] In this case, as in *Rhinehart I*, petitioners claimed as damages their alleged lost donations and membership sales. SCP 15-26.[7]

The other action (*Rhinehart III*, filed in 1986) involved claims of defamation brought because a newspaper article had reported this Court's 1984 decision upholding the protective order issued in *Rhinehart I*. Petitioners apparently disagreed with respondents' reliance upon the Court's language and the allegations in their own pleadings in *Rhinehart I*—and sought to hold respondents liable for these quotations. SCP 4980-5331.

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[6] *See* discussion of *Herr* case, footnote 5, *supra*. The Petition makes several misstatements of fact about the factual background underlying the claims in *Rhinehart II*. *See* Petition at 3-6. Rather than belabor those details, we would simply note that the record contains detailed and uncontradicted evidence supporting respondents' entitlement to summary judgment, which directly contradicts these factual assertions. Judge Armstrong concluded that the summary judgment motion was moot because petitioners had repeatedly defied her discovery orders.

[7] The record below includes the Clerk's Papers ("CP"), the Supplemental Clerk's Papers ("SCP"), the Second Supplemental Clerk's Papers ("SSCP"), and the Report of Proceedings ("RP").

After unsuccessful efforts to obtain discovery, respondents moved for summary judgment in both *Rhinehart II* and *Rhinehart III*. SSCP 1-3; SCP 1700-2003; 2004-2327; 2328-2624; 2658-64; 2665-67; 4367-69; 4425-74; 4980-5331; 5332-34. The trial court determined that the summary judgment motion in *Rhinehart II* was moot and instead dismissed the claims because petitioners had repeatedly defied its discovery orders. SCP 404-09; 1587-1612; 2625-26.

In *Rhinehart III* Judge Armstrong granted respondents' motion for summary judgment, ruled that the claims in *Rhinehart III* were frivolous and were brought "to harass and to needlessly increase the cost of this litigation to defendants" and in violation of RCW 4.84.185 and Washington Civil Rule ("CR") 11, and awarded respondents approximately $42,000 for the expenses, including attorneys' fees, that they had incurred in defending *Rhinehart III*. SCP 5368-74; 4623-26. Petitioners immediately moved for clarification and reconsideration and submitted a rambling, incoherent affidavit by Rhinehart that called respondents "venomous scoundrels" and accused the trial court of "treachery." SCP 4624-48. The trial court denied petitioners' motions. SCP 4731-32; 4733-35.

Petitioners then appealed to the Washington Court of Appeals, which in 1990 affirmed both dismissals and the findings that *Rhinehart III* was in violation of RCW 4.84.185 and CR 11. The court remanded the case, however, for additional findings regarding the fees incurred in resisting the frivolous claims. *Rhinehart v. Seattle Times, Inc.*, 59 Wash. App. 332, 798 P.2d 1155 (1990). After the trial court entered the additional findings, petitioners again appealed to the Court of Appeals, which affirmed in an unpublished ruling and denied two motions for reconsideration. *Rhinehart v. Seattle Times*, 69 Wash. App. 1067 (1993) (unpublished decision). Petitioners unsuccessfully sought review in the Washington Supreme

Court. *Rhinehart v. Seattle Times, Inc.*, 124 Wash. 2d 1010, 879 P.2d 293 (1994).

ARGUMENT

This Petition for Certiorari seeks to raise a constitutional challenge to an award of reasonable attorneys' fees prompted by one of petitioners' many frivolous lawsuits and appeals during the past fourteen years. Petitioners do not, however, present any arguments that satisfy the standards of Supreme Court Rule 10.1(b) and (c).

I. PETITIONERS' CONSTITUTIONAL CHALLENGE TO CIVIL DISCOVERY AND THE PROTECTIVE ORDERS IS BOTH STALE AND INSUPPORTABLE.

Now, approximately twelve years after the Washington Supreme Court first held that respondents' discovery requests sought highly relevant information and that petitioners' objections were without merit, petitioners have filed yet another petition for certiorari presenting this same issue and again insist that they may pursue multi-million damage claims while refusing discovery into the basis for their claims. Petition at 11-19. Rather than satisfy the standards required by the Court for granting a writ of certiorari, however, petitioners have offered nothing more than Yogi Berra's "déjà vu all over again." [8]

More than a dozen years ago, petitioners cited these same cases and raised the identical arguments during their first appeal of their first defamation lawsuit against respondents, *Rhinehart I*. In that case, petitioners alleged that certain newspaper articles by respondents had resulted in a drop in Aquarian Foundation membership and donations. *Rhinehart I* was the subject of this Court's 1984 ruling on the constitutionality of a protective order (identical to the order entered in this case, SCP 404-06) that accompanied the companion discovery order relating

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[8] *See* J. Bartlett and J. Kaplan, eds., *Bartlett's Familiar Quotations* 754 (16th ed. 1992).

to allegations of lost memberships and donations (again, identical to the order that petitioners challenge here, SCP 1587-1612).

The Washington Supreme Court ruled that the trial court had not abused its discretion in entering a protective order limiting respondents' First Amendment rights and a discovery order directed to the issue of lost donations and memberships, because there was "no showing that the protective order is inadequate to prevent any abuse threatened by the defendants":

> The plaintiffs, as the defendants point out, are attempting to assert a privilege to withhold evidence in a private suit where they seek damages based upon the allegedly privileged information. We have reviewed the cases cited in their brief and find none which supports the theory in the circumstances of this case. All of the evidence covered by the order compelling disclosure was relevant to the plaintiffs' claims and the defense of those claims, and their legitimate interests in privacy and association were protected by the court's order insofar as was possible without denying the defendants the right to develop their defenses.[9]

This Court unanimously affirmed the constitutionality of the protective order.[10] Meanwhile, the Court rejected petitioners' challenge to the ruling that upheld the discovery order.[11]

Then, at five-year intervals in *Rhinehart I*, petitioners filed two more unsuccessful petitions for certiorari with this Court, raising again the same issues and citing the same cases.[12] In addition, they also filed at least seven

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[9] *Rhinehart v. Seattle Times Co.*, 98 Wash. 2d 226, 257-58, 654 P.2d 673, 690-91 (1982).

[10] *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984).

[11] *Rhinehart v. Seattle Times Co.*, 467 U.S. 1230 (1984).

[12] *See Rhinehart v. Seattle Times Co.*, 490 U.S. 1015 (1989); *Rhinehart v. Seattle Times Co.*, 114 S. Ct. 1544 (1994).

unsuccessful petitions for certiorari and appeals with the Court in connection with their cases against other defendants, in which they also asserted a constitutional exemption from civil discovery and claimed that the protective orders fashioned by various trial courts were insufficient to protect their claimed constitutional rights.[13]

This consolidated case involves (at least) the eleventh appeal that petitioners have filed in which they have offered the same cases and the same arguments that were rejected by the courts in their first appeal in *Rhinehart I*. Apparently petitioners believe they are entiled to importune this Court for yet another opportunity to renew the same discredited arguments. To adopt petitioners' position would create endless appeals by rewarding stamina and stubbornness rather than legal merit.[14]

Petitioners' constitutional challenge is also wholly without merit. Although petitioners ask the Court to require as a matter of federal constitutional law that the Washington courts adopt a "balancing test" in these circumstances, the standards adopted in *Rhinehart I* (which the Washington courts followed here) were such a balancing test. *See Doe v. Puget Sound Blood Center*, 117 Wash. 2d 772, 778, 819 P.2d 370, 374 (1991). Indeed, in this case, the Washington Court of Appeals expressly applied the balancing test set forth in *Snedigar v. Hoddersen*, 114 Wash. 2d 153, 786 P.2d 781 (1990), which petitioners claim is the appropriate rule. *See* Opinion, 59 Wash. App. at 337-38, 798 P.2d at 1159; Petition at 11-13.

Even if the *Rhinehart* cases have not specifically followed the *Snedigar* rule, moreover, it is important to

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[13] *See* cases cited in Footnotes 4 and 5, *supra*.

[14] "Permitting repeated litigation of the same issue . . . reflects either the aura of the gaming table or 'a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure.'" *Blonder-Tongue Labs., Inc. v. University of Ill. Found.*, 402 U.S. 313, 329 (1971) (quoting *Kerotest Mfg. Co. v. C-O-Two Co.*, 342 U.S. 180, 185 (1952)).

note that *Snedigar* did not involve the fundamental fairness principle at issue here: petitioners' conceded "attempt[] to assert a privilege to withhold evidence in a private suit where they seek damages based upon the allegedly privileged information." *Rhinehart I*, 98 Wash. 2d at 257-58, 654 P.2d at 691.[15] As the Washington Court of Appeals recognized, the trial court's orders complied with *Snedigar* because the record failed to demonstrate **any** probability that compliance with discovery would harm petitioners' constitutional interests, given the entry of a protective order forbidding disclosure of the information. *See* Opinion, 59 Wash. App. at 338, 798 P.2d at 1159.[16]

Moreover, even if petitioners could demonstrate some harm not resolved by the protective order, the discovery orders were (as the Washington courts concluded) clearly appropriate under *Snedigar*. The discovery went to "the 'heart' of the matter." *Snedigar*, 114 Wash. 2d at 165, 786 P.2d at 786. *See, e.g.*, RP, Mar. 1, 1988, at 91 (information "is critical to the case"); SCP 4631-32 (noncompliance prejudiced defense). Also, there was no alternate source for the information. *See Snedigar*, 114 Wash. 2d at 165, 786 P.2d at 786-87.[17]

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[15] Indeed, under Washington law, even well-established privileges are waived when a litigant files suit based upon the allegedly privileged information. *See Pappas v. Holloway*, 114 Wash. 2d 198, 203-09, 787 P.2d 30, 34-37 (1990) (case decided one week after *Snedigar*).

[16] Indeed, the Washington Supreme Court has held that, in these circumstances, the protective order fully protected petitioners' "legitimate interests in privacy and association insofar as was possible without denying the defendants the right to develop their defenses." *Rhinehart I*, 98 Wash. 2d at 257-58, 654 P.2d at 691.

[17] For example, petitioners offered a bookkeeper who would purportedly testify to total numbers claimed as damages, but respondents showed this alternative was "plainly inadequate" because "raw numbers are meaningless as an indication of *why* plaintiffs' contributions and memberships have declined." SCP 1381-95 (em-

In the final analysis, however, the application of Washington's balancing test in these circumstances was a matter of trial court discretion. As this Court noted more than a decade ago in *Rhinehart I*, "[t]he trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery." *Seattle Times Co. v. Rhinehart*, 467 U.S. at 36. Here the Washington trial court has ruled and the Washington Court of Appeals has affirmed that the requested discovery is appropriate and necessary and that the protective order shields petitioners from any claimed constitutional dangers. When it rejected an earlier constitutional challenge relating to the scope of discovery in *Rhinehart I*, this Court stated that "[i]t is sufficient . . . that the highest court in the State found no abuse of discretion in the trial court's decision . . . ." *Seattle Times Co. v. Rhinehart*, 467 U.S. at 37.

II. PETITIONERS' CLAIM THAT FEES WERE NOT AWARDED FOR RESPONDENTS' DEFENSE OF *RHINEHART III* IS CONTRADICTED BY THE TRIAL COURT RECORD.

Petitioners' Fourteenth Amendment argument (Petition at 19-22) about the size of the sanctions award is based on their claim that respondents' fee award in *Rhinehart III* actually includes reimbursement for work performed in defense of *Rhinehart II*. Their claim is directly contradicted by the findings of the trial court. Thus, they mischaracterize the facts in the record when they suggest that the fee award in *Rhinehart III* is excessive as a matter of law and that the trial court failed to distinguish between *Rhinehart II* and *Rhinehart III* when it awarded attorneys' fees as sanctions in *Rhinehart III*. The record

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phasis in original). The trial court agreed, noting that "the causal link can only be proven or disproven by talking to the individuals." RP, Mar. 1, 1988, at 10. The court also suggested that petitioners could avoid their problems merely by dropping the damage claims for loss of memberships and donations but petitioners refused. RP, Jan. 22, 1988, at 20.

shows that all claims in *Rhinehart III* were dismissed with prejudice and that respondents requested and were awarded their fees only for *Rhinehart III*, as permitted by RCW 4.84.185 and CR 11. SCP 4485-4531; 4600-07; 4623-26; 4627-33; 4709-30; 4733-35; 5368-74.

Furthermore, the trial court's 1990 Findings Pursuant to Reference by the Court of Appeals ("Findings")[18] also establish that fees were awarded in the "1986 cause" (*i.e.*, *Rhinehart III*) only. *See* Findings at 1-2. In making its determination, the trial court reviewed in detail the DeVore Affidavit submitted by respondents (SCP 4485-4531)[19] and identified "itemized time entries for the work performed **in this matter**." *Id.* at 2 (emphasis added). The trial court then reduced respondents' fee award by more than one-third from the lodestar number, and thus eliminated any alleged "unnecessary effort" or "duplication of time spent in related litigation"—*i.e.*, in defending the claims asserted in *Rhinehart II*. *Id.* at 2, 4.

After considering all the factors set forth in Washington RPC 1.5(a),[20] the trial court found:

> [D]efendants' request for $40,000 in attorneys fees and $1,981.21 in costs incurred **in defending plaintiffs' frivolous claims**[21] is reasonable.

Id. at 4 (emphasis added). The court added:

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[18] The Findings are part of the record in the Washington Court of Appeals.

[19] Despite petitioners' assertions to the contrary (Petition at 7-8, 19-22), respondents' attorneys in fact segregated their time and expenses incurred defending *Rhinehart II* from those incurred defending *Rhinehart III*. Where a particular task applied to both lawsuits equally, moreover, the fees were split equally between the two matters. SCP 4600-07.

[20] The Findings also belie petitioners' suggestion (Petition at 20) that the trial court somehow ignored Washington law, as reflected in cases such as *Nordstrom, Inc. v. Tampourlos*, 107 Wash. 2d 735, 733 P.2d 208 (1987). *See* Findings at 5.

[21] The only claims that were found to be frivolous were those asserted in *Rhinehart III*.

> This conclusion is based on my independent determination, in consideration of all the circumstances of this case, and **is not reached solely by reference to the time entries of defendants' attorneys.**

Id. at 5 (emphasis added). Petitioners' assertion that the trial court abused its discretion is thus contradicted by the Findings themselves.

III. PETITIONERS' CHALLENGE TO THE "CONCEPT OF FRIVOLITY" RAISES NO SUBSTANTIAL FEDERAL ISSUE.

Petitioners disagree with the trial court's exercise of discretion in awarding sanctions in *Rhinehart III*, claiming "the concept of frivolity," as applied by Washington's courts, is somehow "vague and arbitrary." Petition at 22-25. Their argument, however, is completely unintelligible [22] and may be ignored.

Petitioners' argument also presents no substantial federal issue. The trial court record contains no evidence to support their contention that the sanctions awarded in this case were designed to punish a legitimate effort "to bring novel or minoritarian views for court review." Petition at 23. *Rhinehart III*, it should be remembered, was an attempt to hold respondents liable merely for publishing **this Court's 1984 ruling in Rhinehart I.** Petitioners'

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[22] Petitioners criticize the Washington Court of Appeals' definition of a frivolous action—*i.e.*, a case that "is so devoid of merit that there is no reasonable possibility of success"—by contrasting it with a slightly different formulation of the same rule—*i.e.*, an action "that cannot be supported by any rational argument on the law or facts"—which they inexplicably suggest is a "completely different" and subjective standard. Opinion, 59 Wash. App. at 340-41, 798 P.2d at 1160; Petition at 17, 19. The Opinion, however, applies an objective standard. *See* Opinion, 59 Wash. App. at 340-41, 798 P.2d at 1160; *WSPIE & Ass'n v. Fisons Corp.*, 122 Wash. 2d 299, 343 n.76, 858 P.2d 1054, 1078 n.76 (1993). Yet petitioners seemingly take issue and demand an objective standard. Petition at 22-25.

suggestion that they were singled out for "arbitrary action depending on the personal opinion of the judge" (Petition at 24) or that they received harsher treatment because of their status as a "minoritarian" religious group or cult is also unsupported by the record.

CONCLUSION

For the foregoing reasons, respondents respectfully request that the Court deny the Petition.

Respectfully submitted,

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